



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R09-OAR-2015-0552; FRL-9943-40-Region9]

Approval of California Air Plan Revisions, San Joaquin Valley

Unified Air Pollution Control District and South Coast Air

Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to approve revisions to the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) and the South Coast Air Quality Management District (SCAQMD) portions of the California State Implementation Plan (SIP). These revisions concern emissions of oxides of nitrogen (NO_x) from fan-driven natural-gas-fired central furnaces for residences and businesses. We are approving local rules that regulate these emission sources under the Clean Air Act (CAA or the Act).

DATES: These rules will be effective on **[Insert date 30 days after the date of publication in the Federal Register]**.

ADDRESSES: The EPA has established docket number EPA-R09-OAR-2015-0552 for this action. Generally, documents in the docket for this action are available electronically at

<http://www.regulations.gov> or in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California 94105-3901. While all documents in the docket are listed at <http://www.regulations.gov>, some information may be publicly available only at the hard copy location (e.g., copyrighted material, large maps, multi-volume reports), and some may not be available in either location (e.g., confidential business information (CBI)). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Kevin Gong, EPA Region IX, (415) 972 3073, *Gong.Kevin@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document, "we," "us" and "our" refer to the EPA.

Table of Contents

- I. Proposed Action
- II. Public Comments and EPA Responses
- III. EPA Action
- IV. Incorporation by Reference
- V. Statutory and Executive Order Reviews

I. Proposed Action

On November 7, 2015 in 80 FR 68484, the EPA proposed to

approve the following rules into the California SIP.

Local Agency	Rule #	Rule Title	Amended	Submitted
SJVUAPCD	4905	Natural-Gas-Fired, Fan-Type Central Furnaces	01/22/15	04/07/15
SCAQMD	1111	Reduction of NO _x Emissions From Natural-Gas-Fired, Fan-Type Central Furnaces	09/05/14	04/07/15

We proposed to approve these rule because we determined that they complied with the relevant CAA requirements. Our proposed action contains more information on the rules and our evaluation.

II. Public Comments and EPA Responses

The EPA's proposed action provided a 30-day public comment period. On December 7, 2015, we received two emails from Harvey Eder representing the Public Solar Power Coalition (PSPC). One email included the subject line, "FW: docket ID EPA-R09-2015-0552, Can,t Email You Again All of The Record from me HE/PSPC inc. into record by reference from 6/2014 etc. to today SC PM 2.5 SC SIP EPA- R09-OAR-2015-0204 to Extreme." The second email included the subject line, "FW: Part 3 of 3 there may be a Part 4/ This isDocut ID EPA-R09-OAR-2015-0552, emissions of NO_x from fan-driven natural-gas-firedd furnaces for res & business SCD

R1111/SJV 4905 +FRL-9936-70-Region 9 (pt 1 & 2 also Inc This etc. Incorporate allfrom ...” We received an additional email from PSPC on December 9, 2015 labeled as “part 1 of 3,” after the close of the comment period. We have summarized below the substance of the emailed comments from PSPC to the extent possible. The comments and our responses are as follows:

Comment #1: PSPC listed several external sources in reference to our proposal. These included the following: documents attributed to a California Superior Court case where PSPC was a plaintiff against the SCAQMD; references to information attributed to the International Energy Agency and the California Governor’s Office of Planning and Research; documents previously submitted for comment in other EPA dockets (including EPA-R09-OAR-2015-0204); communications with local and federal officials; and Santa Cruz County and Los Angeles County planning documents. None of these documents were summarized or provided as attachments to comments on docket EPA-R09-OAR-2015-0552.

Response #1: In PSPC’s emails to the EPA, PSPC did not provide attachments or provide source materials supporting its claims. The emails attempted to incorporate by reference various news articles, reports, and other documents in support of PSPC’s stated claims and assertions (see additional discussion in

Comments #2 and #3). However, such a practice is in violation of EPA's commenting guidelines, available at <http://www.epa.gov/dockets/commenting-epa-dockets#rules>. In particular, the comments do not comply with the restriction that "EPA will not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system)."¹

Moreover, submitting general documents on a topic fails to raise any particular issue with reasonable specificity as required by the Clean Air Act and the Administrative Procedures Act. See generally *Mossville Env'tl. Action Now v. EPA*, 370 F.3d 1232, 1238 (D.C. Cir. 2004) ("Petitioners also point to a sentence in the letter requesting the EPA to use 'all reasonably available data, including the data provided under Subpart F.' Petitioners' argument that, because Subpart F contains data for both the ten and 400 ppm standards, the EPA was on notice fails for the same reasons as articulated above.") Therefore, EPA is not making any changes to our proposed approval on the basis of this comment.

Comment #2: PSPC commented that a range of solar-related technologies, including solar seasonal heating, concentrating

¹ United States Environmental Protection Agency. "Commenting on EPA Dockets – Rules and Restrictions." Last updated December 21, 2015. <http://www.epa.gov/dockets/commenting-epa-dockets>

solar, and photovoltaic-powered heating and cooling systems are an alternative to natural gas-fired home furnaces that are subject to this rule. PSPC claims that the EPA should consider such technologies as RACT for space heating applications that are currently being fulfilled by furnaces.

Response #2: The EPA can identify no CAA requirement in PSPC's comment emails that would require the consideration of solar-based technologies as RACT in this context, as all natural gas-fired fan-driven furnaces subject to these rules do not meet the major source threshold triggering a RACT requirement for ozone. The SIP must still implement all RACM/RACT for NO_x, but these requirements are generally evaluated in the context of a broader RACM/RACT assessment. Furthermore, the revisions to South Coast Rule 1111 that are the subject of this action do not include any substantive revisions concerning control technologies or emission limits that PSPC's comment would be germane to.

Comment #3: PSPC made several additional claims including: the solar technologies as described would be RACT for other source categories, including boilers and heaters not subject to the rules in this action; and water tank-based solar seasonal storage heating has secondary use in firefighting and public safety applications following earthquakes.

Response #3: These claims are not relevant to our analysis of the approval of the rules and we are finalizing our proposed approval without change.

III. EPA Action

No comments were submitted that change our assessment of the rules as described in our proposed action. Therefore, as authorized in section 110(k)(3) of the Act, the EPA is fully approving these rules into the California SIP.

IV. Incorporation by Reference

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of the SCAQMD and SJVUAPCD rules described in the amendments to 40 CFR part 52 set forth below. The EPA has made, and will continue to make, these documents available electronically through www.regulations.gov and in hard copy at the appropriate EPA office (see the **ADDRESSES** section of this preamble for more information).

V. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR

52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);

- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);

- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);

- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);

- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and

- does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [**Insert date 60 days after date of publication in the Federal Register**]. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be

challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control,
Incorporation by reference, Intergovernmental relations, Nitrogen
dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: February 4, 2016.

Jared Blumenfeld,
Regional Administrator,
Region IX.

Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52 - APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for Part 52 continues to read as follows:

AUTHORITY: 42 U.S.C. 7401 et seq.

Subpart F - California

2. Section 52.220 is amended by adding paragraphs

(c) (344) (i) (C) (2), (c) (379) (i) (A) (6), (c) (461) (i) (C) (2) and (c) (461) (i) (D) to read as follows:

§52.220 Identification of plan.

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(c) * * *

(344) * * *

(i) * * *

(C) * * *

(2) Previously approved on May 30, 2007 in paragraph

(c) (344) (i) (C) (1) of this section and now deleted with

replacement in paragraph (c) (461) (i) (D) (1), Rule 4905, "Natural-

Gas-Fired Fan-Type Central Furnaces," adopted on October 20, 2005.

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(379) * * *

(i) * * *

(A) * * *

(6) Previously approved on August 4, 2010 in paragraph (c) (379) (i) (A) (3) of this section and now deleted with replacement in paragraph (c) (461) (i) (C) (2), Rule 1111, "Reduction of NOx Emissions from Natural-Gas-Fired Fan-Type Central Furnaces," amended on November 6, 2009.

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(461) * * *

(i) * * *

(C) * * *

(2) Rule 1111, "Reduction of NOx Emissions From Natural-Gas-Fired, Fan-Type Central Furnaces," amended September 5, 2014.

(D) San Joaquin Valley Unified Air Pollution Control District.

(1) Rule 4905, "Natural-Gas-Fired, Fan-Type Central Furnaces," amended January 22, 2015.

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[FR Doc. 2016-06962 Filed: 3/28/2016 8:45 am; Publication Date: 3/29/2016]